

**United States District Court  
Western District of Wisconsin**

Gerald Harris,  
(Full name of plaintiff[s])

268692,  
(Prisoner I.D. Number)

Case No. 09-cv-160-X  
(Provided by clerk of court)

Plaintiff(s),

v.

University of Wisconsin and the  
University of Wisconsin Rathskeller Bar and Grill

\_\_\_\_\_  
(Full name of defendant[s])

Defendant(s).

**COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983**

**I. PLACE OF PRESENT CONFINEMENT (Provide full address)**

Oakhill Correctional Institution/ P.O. Box 938/ Oregon, WI 53575

A. Is there a grievance procedure in your prison/jail? YES ☒ NO ☐

B. Have you filed a grievance concerning the facts relating to this complaint?  
YES ☐ NO ☒

C. If you have used the grievance process:

1. Describe what you did and the result, if any.  
\_\_\_\_\_  
\_\_\_\_\_

2. Is the grievance process completed? \_\_\_\_\_

D. If you did not use the grievance process, explain why not.

This matter dose not concern the Institution

4/07

P:\Forms\42USC1983.Complaint

**II. PARTIES**

- A. Your name (Plaintiff) Mr. Gerald Harris
- B. Prisoner I.D. Number 268692
- C. Your address O.C.I, P.O. Box 938 Oregon WI 53575-0938

(For additional plaintiffs provide the same information in the same format on a separate page.)

- D. DEFENDANT (name) President
- is employed as The U.W Head or chife of command
- at University of Wisconsin in Madison
- E. Additional DEFENDANTS (names and positions):

To the Manger of the Wisconsin Memorial Union Rathskeller Bar and Grill

### III. PREVIOUS LAWSUITS

- A. Have you begun other lawsuits in state or federal court relating to the same facts involved in this action? YES ☐ NO ☒
- B. Have you begun other lawsuits in state or federal court relating to your imprisonment? YES ☐ NO ☒
- C. If your answer is YES to either of the above questions, provide the following requested information.

1. Parties to the previous lawsuit

Plaintiff(s): \_\_\_\_\_

Defendant(s): \_\_\_\_\_

2. Date filed \_\_\_\_\_

3. Court where case filed (if federal court, name district; if state court, name the

Plaintiff(s): \_\_\_\_\_

Defendant(s): \_\_\_\_\_

:

2. Date filed \_\_\_\_\_
3. Court where case filed (if federal court, name district: if state court, name the county) \_\_\_\_\_
4. Case number and citation \_\_\_\_\_
5. Basic claim made \_\_\_\_\_  
\_\_\_\_\_
6. Current status (for example: Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_  
\_\_\_\_\_
7. If resolved, date of disposition \_\_\_\_\_
8. If resolved, state whether for \_\_\_\_\_  
(Plaintiff or Defendant)

(For additional cases, provide the above information in the same format on a separate page.)

#### IV. STATEMENT OF CLAIM

- A. State as briefly as possible the facts of your case. Describe how each named defendant is involved. Include the name of other persons involved, dates, and places. Describe specifically the injuries incurred. Do not give legal arguments or cite cases or statutes. You may do that in Item "B" below. If you allege related claims, number and set forth each claim in a separate paragraph. Use as much space as you need to state the facts. Attach extra sheets, if necessary. Unrelated separate claims should be raised in a separate civil action.

On February 5, 2005, Plaintiff attended an event called the (Kites on Ice Festival) that was located on the back side of Memorial Union on the campus

STATEMENT OF CLAIM continued

of the University of Wisconsin, Madison. Plaintiff was standing outside on the Union memorial tarrace, watching the Kite On Ice Festival when two white female patrons asked if I wanted two empty pichers of beer that I could collect the deposit off of. I said yes and was given the pitchers & was directed to to take them in to Memorial Union to get the deposit, however, as I attempted to enter Memorial Union I was stopped by an aggressive white male employee; later idenified as Kyle P. Mueller, who grabbed the pitchers out of my hands and shouted "do you have a pass or a membership card to enter the building!?" I said no & then Mr. Mueller then said to me in a angry voice "you can't come in!" I said "why you not asking all those other white people for passes & membership cards & allowing them to go in", and he said because "we don't serve you niggers". Then he turned to his co-worker, Mr. Joshua J. Barnes & started laughing & gesturing & said "this nigger is trying to get the deposit off these pitchers". Mr. Mueller then told me to leave before he call the police, & I said go right ahead I have done nothing wrong here. There were lots of people standing around in awe watching & listening as Mr. Mueller & Mr. Barnes degraded me using the "N" word & Mr. Barnes giving me his middle finger saying "we don't serve you niggers". Mr. Mueller even went as far as to attack one of his black employees in front of everyone saying "I don't like you black people". SEE EXHIBIT "A", "B", + "C" ALL ATTACHED

B. State briefly your legal theory or cite appropriate authority.

The University of Wisconsin, Madison; Memorial Union was being used as a "place of public accommodation" as defined by section 201(c)(3) of Title II of the Civil Rights Act of 1964 (Act), 42 U.S.C. section 2000a during the time the Kite On Ice Festival was being held, & it's operation affected commerce. Therefore the defendant's refusal to allow plaintiff to enter Memorial Union based on his race violated the Civil Rights Act of 1964. (See Daniel Et Al. v. Paul No. 488 Supreme Court Of The United States, 395 U.S. 298; 89 S. Ct. 1697(1969))

V. RELIEF YOU REQUEST

State briefly and exactly what you want the court to do for you. Make no legal arguments. Do not use this space to state the facts of your claim. Use it only to request remedies for the injuries you complain about.

The Plaintiff hereby request to be immediately monetarily compensated in the amount of \$1.000.000 (One Million Dallors) for indeterminate, compensatory, and punitive damages by the defendants for the racial discrimination, embarssment, & public humiliation injuries suffered by the plaintiff by the actions of the University of Wisconsin Madison's Student Supervisor; Kyle P. Mueller, & Union Employee; Joshua J. Barnes, and also plaintiff request a refund of \$247 dallors for the ticket he paid after being wrongly accused of disorderly conduct.

I declare under penalty of perjury that the foregoing is true and correct.

Complaint signed this 10 day of 20-09, \_\_\_\_.

Signature of Plaintiff(s)

Herald Harris

(If there are multiple plaintiffs, each must sign the complaint)

Prisoner I.D. Number(s) 268692

On February 5, 2005, plaintiff attended an event called (KITE ON ICE) that was located on the back side of Memorial Union on the campus of the University of Wisconsin, Madison. Plaintiff was standing on the ground floor terrace of Memorial Union, watching the kite show when two kind white female patrons asked if I wanted two empty pitchers of beer that I could collect the deposit off of. I said yes and was given the two empty pitchers and was directed to take them in to Memorial Union to the bartender to get the deposit. However, as I walked off the terrace and attempted to enter Memorial Union, I was stopped at the door by an aggressive white male employee; later identified as a "Student Manager" who grabbed both empty beer pitchers out of my hands and shouted "do you have a pass, or a membership card to enter the building?" I told the student manager I do not have a pass or a membership card, and he shouted to me in an angry voice "you can't go in". I then said to him "why you not asking all those other white people for passes & membership cards and allowing them to go in". He then said to me in a rather arrogant manner "we do not serve you niggers". Then he turned to one of his co-workers laughing and gesturing and said this "nigger" is trying to get the deposit off these pitchers. His co-worker then gave me the middle finger and said to me "we don't serve you niggers". The student manager then told me to leave or he will call the campus police. I said to him go ahead and call them I have not done anything wrong. There was all kind of people standing around watching and listening as I conversed with the student manager as he and his co-worker called me the (N-Word) on more than one occasion as we traded dialog. The student manager even went as far as to attack one of the black employees in front of the audience of white patrons telling the black employee; "I don't like you black people!" Witnesses came up to me and told me that they heard what that employee said and if I needed they will tell what happen to a lawyer. The campus police eventually showed up to investigate; there was a total of about six campus police who came in all. One of the campus police, later identified as (Mr. M. Silbernagel) came and talked to me about what happen, and I told him that the student manager had refused to let me enter Memorial Union to get the refund from two empty pitchers of beer, and that he and his co-workers were being racial discriminative towards me; by saying to me "we do not serve you niggers", and not allowing me to enter Memorial Union. The campus police then left, and after going to talk to the student manager in private came back and told me that he believes I was disorderly and issued me a \$247 dollar disorderly conduct ticket.

#### RELIEF REQUESTED

The plaintiff hereby request to be immediately monetarily compensated in the amount of \$1.000.000 (One million Dollars) for both punitive and compensatory damages by the defendant for the racial discrimination, embarrassment, and humiliation injuries suffered by the plaintiff at the hands of the University of Wisconsin Madison's

student manager and co-worker of Memorial Union, whose willful, malicious, wantonly, and oppressive behavior was witnessed by a very large audience of patrons who were standing around nearby watching the entire discrimination take place while attending the (KITE ON ICE) show. I also request that plaintiff be reimbursed the \$247 dollars he paid for the ticket he was given by the University of Wisconsin, Madison Police Department after being wrongly accused of disorderly conduct.

GERALD HARRIS #268692

THE EVENTS THATS AT THE Memorial Union, And public  
come and be welcome, AND NO ONE IS ASK "DO YOU HAVE  
A guest PASS"

1. Concerts inside + outside of the RATHSKELLEN BAR + GRILL
2. Weddings And PARTIES
3. "KITE ON ICE EVENT"
4. Rent out BOATS
5. Pool Table, T.V.s
6. BAR + RESTURANTS
7. FERTENNETY AND SORORITIES PARTIES
8. Hotel Rooms
9. MEETING ROOM
10. Travel Agent Co.
11. SNACK BARS and Shops.
12. Public Phones + Restrooms
13. Union South has Bowling
14. TRAVELING guests' AND Students AND public set in the  
RATHSKELLEN BAR AND GRILL AND WATCH THE PACKERS OR BADGERS  
GAMES ON THE BIG SCREEN T.V
15. Out Side TERRACE For THE Public, Students AND TRAVELERS
16. Poker games AT the Union South
17. Theaters, For public, students AND TRAVELERS
18. Badgers COACH BUS AND BUS TICKET Sale to the  
Public, Students, TRAVELERS
19. Lake in BACK OF Memorial union For THE Kids, PARENTS,  
Student AND Public. EVERYBODY LAUNGING AND DRINKING BEERS  
These EVENTS goes ON everyday EXCEPT "KITE ON ICE"



## OFFENDER REQUEST FOR DEPARTMENT OF JUSTICE CERTIFICATION

INSTRUCTIONS: SEND COMPLETED FORM TO:

Department of Justice  
Civil Litigation Unit  
17 West Main Street, 6<sup>th</sup> Floor  
P.O. Box 7857  
Madison, WI 53707-7857

I, GERALD HARRIS 268692,  
(Print Plaintiff's Name) (DOC Number)

wish to request a Department of Justice Certification as to three or more dismissals under Wis. Stat. § 801.02(7)(d).

I am an offender in the custody of the Wisconsin Department of Corrections.

I am seeking to file a civil action, using the Prisoner's Petitioner for Waiver of Fees/Costs, under Wis. Stat. § 814.29(1m). Please send me a certification (form DJ-LS-22) to show that I am eligible to use this procedure and so that I may submit this certification along with the other paperwork that is required.

Please mail the certification to me at:

OFFENDER NAME and DOC NUMBER (Please Print)

GERALD HARRIS 268692

INSTITUTION NAME (If Applicable)

DAKOTA CORRECTIONAL INSTITUTION

MAILING ADDRESS (Post Office or Street)

Post Office Box 938

CITY

Oregon

STATE

WI

ZIP CODE

53575-0938

Gerald Harris  
SIGNATURE OF PLAINTIFF

1-20-09  
DATE SIGNED

Date: 3/04/05 UW-MADISON POLICE DEPT 1429 MONROE ST  
Time: 8:57:44 Offense Report

Page: 1  
Program: CMS301L

Case No. . . . : 1-05-001365  
Case Number . . : 1-05-001365

\*\*\*\*\* N A R R A T I V E # 3 \*\*\*\*\*  
OFFICER'S PRIMARY REPORT Reported By: SILBERNAGEL, MARK M. 2/10/05

Disorderly Conduct MMS 05-01365

Date/Time:  
02-05-05 at 6:40PM

Location:  
UW Memorial, Union Rathskeller  
800 Langdon Street  
Madison, WI  
District #1

Alcohol Involved:  
Yes.

Drugs Involved:  
No.

Suspect/Offender:  
Gerald (NMI) Harris  
M/B, dob: 02-21-58  
5 10 , 215 lbs., hair: black, eyes: brown  
No permanent address  
WI ID Card number: H620-2808-8061-05, expires 07  
Verbally identified (confirmed by DOT descriptors)  
No UW Affiliation  
Alcohol involved: Beer  
P.B.T. result: Test not given  
Alcohol consumed at: Unknown location  
Status: cited and released

Citation:  
Disorderly conduct, UW-Administrative Code 18.06(30)  
Citation number: P85541  
Bond amount: \$274.00  
Non-mandatory court date: 03-04-05 at 9:00AM, Dane County Circuit Court

Witness:  
Kyle P. Mueller  
M/W, dob: 05-01-83  
1509 Adams Street, Apt. #2  
Madison, WI 53711  
Cell phone number: (920) 901-2355  
Verbally identified (I recognized Mueller from prior professional contacts) UW-Staff/Rathskeller Supervisor

Witness:

Date: 3/04/05  
Time: 8:57:44

UW-MADISON POLICE DEPT 1429 MONROE ST  
Offense Report

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Case No. . . . : 1-05-001365

(Continued)

Joshua J. Barnes  
M/W, dob: 11-04-81  
811 Garfield Street  
Madison, WI 53711  
Cell phone number: (770)403-5376  
Verbally identified  
UW Staff/Rathskeller employee

Assisting Officers:  
Officer Anna Moline-UWPD  
Officer Cherise Caradine-UWPD

Narrative:

On 02-05-05 at 6:40PM, I responded to the Memorial Union, Rathskeller regarding a report of a suspect who had become belligerent with staff. Officer Moline and Officer Caradine were partnered together and responded to assist.

Upon arrival at that location, I made contact with Kyle P. Mueller, who is the Rathskeller Supervisor and who I recognized from prior professional contacts. Mueller directed me to the area just outside the Rathskeller on the exterior north side of the building. Mueller identified the Male/Black subject standing outside of the Rathskeller window as the person who caused the disturbance in the Rathskeller. I made contact with the Male/Black subject, who I verbally identified as Gerald (nmi) Harris.

Officer Moline and Officer Caradine arrived and monitored Harris, while I interviewed Mueller. Mueller stated that on 02-05-05 at approximately 6:30PM, he had observed Harris collecting empty plastic beer pitchers from inside the Rathskeller. Mueller stated that people who purchase pitchers of beer from the Rathskeller can return the pitcher for deposit refund. Mueller stated it is against the Rathskeller policy for people who have not purchased the pitchers to return them for refunds. Mueller said he confiscated the pitchers from Harris and advised him he could not redeem them for the deposits. Mueller stated Harris became very agitated and accused Mueller of being a racist. Mueller stated Harris became increasingly agitated and began yelling words similar to fat ass bitch and fucking bitch, and several other profanities.

Mueller said there had been several people including young children in the Rathskeller who were leaving the area after attending the Kites on Ice event. Mueller stated he told Harris that he was going to call the police at which time Mueller said Harris retrieved his belongings from the Rathskeller and went outside to the Memorial Union Terrace. *I NEVER WAS IN THE BUILDING*

Mueller stated that while Harris was on the Union Terrace just outside of the Rathskeller bar window, Harris continued to yell profanities. *SS GERALD HARRIS* Mueller stated that one of his co-workers, Joshua J. Barnes, opened the Rathskeller bar window to check the welfare of Mueller. Mueller said Harris then displayed his middle finger towards Barnes and swore

Date: 3/04/05  
Time: 8:57:44

UW-MADISON POLICE DEPT 1429 MONROE ST  
Offense Report

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Case No. . . . : 1-05-001365

(Continued)

at him. Mueller stated that as Barnes shut the window, Mueller heard Harris say, Bring your ass out here and I ll kick your ass.

I made contact with Joshua J. Barnes, who I verbally identified. Barnes stated that he had been working at the Rathskeller Bar when he heard Harris yelling just outside of the building. Barnes stated he opened the window to check the welfare of Mueller. Barnes said he heard Harris yelling profanities. Barnes said he told Harris that he should calm down and then closed the window.

I interviewed Harris, who initially stated he had been inside the Rathskeller but later stated he had only been standing outside of the Rathskeller on the Union terrace. Harris initially said he had been holding an empty plastic beer pitcher, which he later said was two, that was given to him by an unidentified female. Harris said Mueller took the pitcher from him and that Mueller had told him, I hate black people. Harris stated he got loud, because Mueller had made a racist comment to him. Harris denied using any profanities or making any threatening statements. I detected a slight odor of alcohol intoxicants emanating from Harris and I observed his eyes were bloodshot and glassy. I determined Harris was intoxicated but not incapacitated *this is a lie*

I conducted a records check of Harris, via UWPD Dispatch Personnel. The records check did not reveal any active arrest warrants for Harris.

I escorted Harris off the Memorial Union property and issued him a citation for disorderly conduct. I advised Harris that he could not return to the Memorial Union that evening, per Memorial Union policy. I also advised Harris that he would need to obtain a Union membership or UW affiliation in order to be an authorized user of the Memorial Union in the future.

End of report.

Officer Mark M. Silbernagel, #7706  
UW-Madison Police Department

Jad

APPROVED: SGT.WHITNEY

\*\*\*\*\* END OF REPORT \*\*\*\*\*

I, Gerald Harris never got a alocohol breath test to see if I was drinking

was more likely to have occurred based on the credibility of the witnesses. In this case, EDRRC cannot determine which version of the events is more credible, and therefore, we have determined that there is insufficient evidence to support the complainant's allegations that he was discriminated on the basis of his race.

EDRC did, however, find one area of agreement between the complainant and the student supervisor concerning the events on February 5, 2005. Additionally, the bartender provided information about his actions, which the complainant did not allege. Although these actions did not represent discriminatory acts by the employees, they raised concerns about whether their actions reflect appropriate standards of behavior expected from Union employees who deal with members of the public. Based on our review of the information, EDRRC concluded that both the student supervisor and the bartender exhibited poor judgment and employed inappropriate language in their interactions with the complainant.

The student supervisor said that as he understands it, the Union policy for dealing with disruptive patrons is to stay calm and tell the patron what the policy is, which he did as it applies to returning empty pitchers. However, the student supervisor said that after he explained the policy, the complainant called him a racist numerous times and he allegedly was "making a scene." The student supervisor tried to calm him down by admitting that he was a racist. The scene was witnessed by a custodial employee of the Union. This custodial employee acknowledged that he heard the student supervisor admit to being a racist, but told EDRRC on two different occasions, that he regarded the student supervisor's tone as sarcastic.

In his interview with EDRRC, the student supervisor said that it was a mistake to admit to being a racist, a view echoed by his supervisor. This statement, which was intended to calm the complainant down, instead, apparently agitated and irritated him further. The student supervisor's admission to be a racist was inappropriate and served as one of the main points made by the complainant in his complaint against the University.

Similarly the bartender made a serious error in judgment in dealing with the complainant; an error which he admits was caused by his frustration in dealing with too many angry people who have had too much to drink. When the complainant allegedly turned his attention to the bartender and began yelling at him, the bartender stated that he said something to the effect to the complainant: "I'll bet you use the race-thing all the time. Probably, anytime someone does something you don't like."

This statement was unnecessarily provocative. It raised the level of tension and caused the complainant, according to the bartender, to ask him "in a rather pointed manner if I also hated black people. Before I could say a word, he immediately followed up by saying, 'Yeah, you [sic] probably as racist as him'." The complainant then allegedly physically threatened him.

EQUAL RIGHTS DIVISION

GERALD HARRIS,

*Complainant,,*

v.

STATE OF WISCONSIN  
UNIVERSITY OF WISCONSIN - MADISON,

*Respondent.*

MY WITNESS ↓

DECLARATION OF CHRISTOPHER BURNS

The undersigned Christopher Burns hereby declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that:

1. My name is Christopher Burns and I am an African-American adult male.
2. My birthday is 11.8.73.
3. My address is 6231 University Avenue, Madison, Wisconsin, 53705.
4. My phone number is 608. 243.0966
5. Someone who will always know how to reach me and is unlikely to move is

Stanley Sallay His/Her address is (UNKNOWN) (608) 772.3118


\_\_\_\_\_, and his/her phone number is \_\_\_\_\_ ↓



EXHIBIT 'H' P. 2 OF 3

6. I am employed as a staff member of Building Services for the University of Wisconsin – Madison. I have been employed in that position since January 12, 2005.
7. On February 5, 2005, I was working at the Memorial Union. On this day, there was a Kites on Ice public activity going on at the Union Terrace.
8. During that afternoon, I was exiting the Rathskeller, which is a restaurant area inside the Memorial Union, and heading outside onto the area of the Union Terrace.
9. While exiting the building, I heard an African-American man, who I now know as Gerald Harris, talking loudly with a Rathskeller employee.
10. Mr. Harris was stating something to the effect of, "Man, you shouldn't be telling me things like that. You shouldn't be telling me that you are a racist and that you don't serve niggers, you don't know me, you don't know who I am."
11. Mr. Harris then noticed me standing near the incident and pulled me aside. Mr. Harris then told me that the Rathskeller employee would not let him return two plastic pitchers because he was an African-American man, and that the Rathskeller employee had called him a "nigger".
12. While relaying this information to me, Mr. Harris seemed genuinely upset, and I believe that he was telling me the truth about what happened between himself and the Rathskeller employee.
13. Mr. Harris then asked the Rathskeller employee to repeat what he had said to him, and the Rathskeller employee stated, "Yeah, I'm racist."

14. The tone of voice of the Rathskeller employee could have been sarcastic. Even if he was being sarcastic, the employee should have been professional and should not have said that at all.
15. Before February 5, 2005, I had never meet Gerald Harris. I am not a friend of Mr. Harris's.
16. About two to three weeks after the incident, I was interviewed by an Attorney for the University of Madison.
17. During the interview, the Attorney took handwritten notes and I watched what he was writing during the interview.
18. At no time during the interview did the Attorney offer for me to review his notes on what I had said, nor did he allow me to make any changes to what he had written down.
19. I do not remember signing anything from my interview with the Attorney.
20. I have read this statement of THREE pages typed and I declare that the foregoing are based on my personal knowledge obtained through my own observations.
21. I declare, under penalty of perjury, that the foregoing is true and correct.
22. I have executed this Declaration on the 12<sup>th</sup> of Aug. 2005.

  
Christopher Burns



The  
Plaintiff

1. NO BEER WAS BEENING SERVED OR DRINKING FROM
2. NO BREATH TEST FOR BEER GIVEN TO THE PLAINTIFF  
By the Police
3. UNIVERSITY SHOULD HAVE KNOWN ABOUT MR. MUELLER  
AND BARNES WAS "<sup>RACIAL</sup> ~~RACIST~~" TO BLACKS AND THE  
UNIVERSITY OF WISCONSIN "RATHSKELLER BAR & GRILL"  
SHOULD HAVE KNOWN ALSO THE UNIVERSITY OF WISCONSIN  
AND THE UNIVERSITY OF WISCONSIN OF MADISON MEMORIAL  
UNION "RATHSKELLER BAR & GRILL" HIRED MR. MUELLER  
& MR. BARNES. IF THE U.S. MARSHAL WOULD HAVE  
GOT THERE SOCIAL SECURITY NUMBER I THINK  
THEY COULD HAVE BEEN FOUND. THE DEFENDENTS  
MUELLER & BARNES INFORMATION IS ON THE  
POLICE REPORT.

PLAINTIFF:

GERALD HARRIS #268692

ADDRESS TO THE U. OF WISCONSIN  
"KEVIN"

GERALD HARRIS # 268692

09 C 160

DOC NO  
REC'D/FILED

2008 MAR 19 AM 9:39

U.S. DISTRICT COURT  
WEST VIRGINIA

I GERALD HARRIS WAS TOLD BY THE COURT  
THAT MY CASE 08-CV-71866 WAS DISMISSED, BECAUSE  
THE DEFENDENTS MUELLER & BARNES COULDN'T  
BE FOUND TO BE SERVE THERE PAPERS. THE  
COURT DISMISS MY CASE. THE COURT GIVE  
ME UNTIL 30 DAYS TO FILE THIS COMPLAINT  
AND TO HAVE ~~THE~~ THING SENT TO THE  
RIGHT DEFENDENTS. I SUPPOSE TO SEND FOR  
MY ~~NAME~~ <sup>NEW</sup> CASE. I SENT ~~THESE~~ PAPERS TO  
THE WRONG PLACE AND THE PAPERS WAS SENT  
BACK TO ME. MY INMATES STATEMENTS WAS  
SENT TO DEPARTMENT OF JUSTICE  
CIVIL LITIGATION UNIT  
17 WEST MAIN STREET 6<sup>TH</sup> F1  
P.O. BOX 7857  
MADISON WI 53707-7857

I'M SEND THOSE COPIES TO YOU TO SERVE  
THE ~~RIGHT~~ DEFENDENTS. I'M FILING A NEW  
CASE AGAINST THE TWO DEFENDENTS.  
PLEASE GIVE ME A NEW CASE NUMBER

Thank You

P.S. I HOPE I'M SENDING THESE STATEMENT  
TO THE RIGHT DEFENDENTS.



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN  
ATTORNEY GENERAL

Raymond P. Taffora  
Deputy Attorney General

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
[www.doj.state.wi.us](http://www.doj.state.wi.us)

John R. Sweeney  
Assistant Attorney General  
[sweeneyjr@doj.state.wi.us](mailto:sweeneyjr@doj.state.wi.us)  
608/264-9457  
FAX 608/267-8906

February 25, 2009

Mr. Gerald Harris #268692  
Oakhill Correctional Institution  
PO Box 938  
Oregon, WI 53575-0938

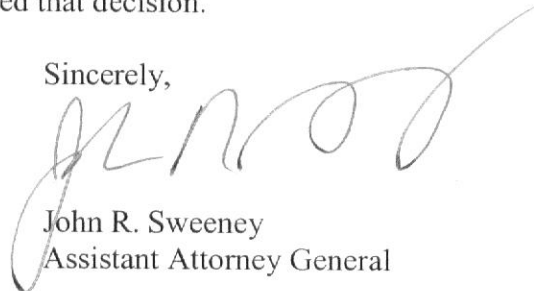
Re: Documents Received

Dear Mr. Harris:

On February 24, 2009 we received several documents from you. I do not intend to do anything with these documents.

Your case with the Western District of Wisconsin Case No. 08-cv-0718 is dismissed . It is my understanding that you have appealed that decision.

Sincerely,



John R. Sweeney  
Assistant Attorney General

JRS:jph  
Enclosures

UNIVERSITY OF WISCONSIN  
IN MADISON

THE ADDRESSES: KEVIN REILLY  
1720 VAN HISE HALL  
1220 LINDEN DR  
MADISON WI 53706  
PH. (608) 262-2321

UNIV. OF WISCONSIN MEMORIAL UNION RATHSKELLER  
BAR & GRILL: 800 LANGDON ST  
MADISON, WI;  
53706  
PH. (608) 265-3000

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----  
GERALD HARRIS,

Plaintiff,

v.

ORDER

08-cv-718-lsa

MR. JOHN WILEY, Chancellor, UW-Madison;  
MR. KYLE P. MUELLER, UW Staff, Rathskeller  
Supervisor; and MR. JOSHUA J. BARNES, UW  
Staff, Rathskeller Employee,

Defendants.  
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This case was filed originally in the United States District Court for the Eastern District of Wisconsin. In an order dated May 15, 2008, Judge Charles N. Clevert granted plaintiff's request to proceed in forma pauperis on claims under 42 U.S.C. §§ 1981 and 1985(3) against defendants John Wiley, Kyle Mueller and Joshua Barnes. In the same order, the court directed the United States Marshal to serve defendants with plaintiff's complaint. Defendant Wiley was served on June 3, 2008. However, before defendants Mueller and Barnes had been properly served, Magistrate Judge William Callahan entered an order transferring the case to this court under 28 U.S.C. § 1404(a) pursuant to plaintiff's request.

Copy of this document has been  
provided to: plaintiff  
RRB Summary vide 12/1  
this 10 day of Feb 20 09  
by Attorney  
to

The United States Marshal was unable to serve defendants Mueller and Barnes, and in an order dated January 22, 2009, I dismissed Mueller and Barnes from the case. Also in that order, I granted defendant Wiley's motion to dismiss the complaint as to him for plaintiff's failure to allege Wiley's personal involvement in depriving plaintiff of his civil rights. Judgment was entered January 23, 2009. Now plaintiff has filed a notice of appeal from that judgment, as well as a motion for leave to proceed in forma pauperis on appeal.

Plaintiff's request for leave to proceed in forma pauperis on appeal will be denied, because I am certifying that his appeal is not taken in good faith. No reasonable person could suppose that this appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 632 (7th Cir. 2000). Defendants Mueller and Barnes cannot be located, and therefore this court cannot exercise personal jurisdiction over them. Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999). Further, there is no dispute that plaintiff cannot maintain his 42 U.S.C. §§ 1981 and 1985 claims against defendant Wiley because there are no allegations in the complaint suggesting that Wiley was personally involved in depriving plaintiff of his civil rights.

Because I am certifying plaintiff's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Pursuant to Fed. R. App. P. 24, plaintiff has 30 days from the date of this order in which to ask the court of appeals to review this court's denial

of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order. Plaintiff should be aware that if the court of appeals agrees with this court that the appeal is not taken in good faith, it will send him an order requiring him to pay all of the filing fee by a set deadline. If plaintiff fails to pay the fee within the deadline set, the court of appeals ordinarily will dismiss the appeal and order this court to arrange for collection of the fee from plaintiff's prison account.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that petitioner's appeal is not taken in good faith. The clerk of court is directed to insure that petitioner's obligation to pay the \$455 fee for filing his appeal is reflected in the court's financial record.

Entered this 6 day of February, 2009.

BY THE COURT:



LYNN ADELMAN  
District Judge

GERALD HARRIS # 268692

The other Statements will be sent to  
you very soon, BY THE Business office of  
OAK Hill Correctional Institution

Thank you  
Gerald Harris



GERALD HARRIS # 268692

This is the CASE that Back up my Claim

Daniel v Paul, 395 U.S. 298

395 U.S. 298, 89 S. Ct. 1697

23 L. Ed. 2d 318, 1968 U.S. Lexis 1438

Daniel et al v Paul

NO 488

Supreme Court of the United States

395 U.S. 298, 89 S. Ct 1967, 23 L. Ed. 2d 318

1969 U.S. Lexis 1438

] ACT OF 1964 (ACT) 42 U.S.C.S § 2000A et seq

Section 201(b) Civil Right Act of 1964

201(c) 11

201(b)(3) AND 201(c)(3)

See. KATZENBACH v M'CLUNG, 379 U.S. 294, 296-297 (1964). GREGORY v. MEYER, 376 F.2d, 509, 511, n (C.A. 5th Cir. 1967). EVANS v LAUREL LINKS, INC 261 F. Supp. 474 (D.E.D. VA, 1966). UNITED STATES v. FARLEY 282 F. Supp. 948 (D.C. M.D. N.C. 1968). UNITED STATES v. ALL STAR TRIANGLE BOWL, INC 283 F. Supp. 300 (D.S.C. 1968). MILLER v AMUSEMENT ENTERPRISES, INC. 374 F.2d, 372 (1968). BELL v. MARYLAND, 378 U.S. 226, 242, ATLANTA MOTEL v UNITED STATES, 379 U.S. 241, 279. et seq. UNITED STATES v. GUEST, 383 U.S. 745, 761

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